

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 82 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SHANMUKHAM RELINGAM

Versus

RAMANBHAI MOTIBHAI PATEL

Appearance:

MR AJ PATEL for Petitioners
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 25/07/2000

ORAL JUDGEMENT

1. This is a revision u/s 29[2] of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original defendant - tenant, who was sued by the respondent - plaintiff - landlord for a decree of eviction under the provisions of the Bombay Rent Act.

2. The landlord had sued for eviction of the defendant - tenant on the ground that the tenant was in arrears of rent of more than six months, and inspite of the statutory notice of demand, had not cared to pay or deposit the same, and therefore was not ready and willing to pay the rent. The trial Court after appreciating the evidence on record, found on the facts of the case that the tenant was in fact in arrears of rent of more than six months, and that inspite of the notice of demand, had failed and neglected to pay the same, and that therefore, he was liable to be evicted under the provision of section 12[3][a] of the Bombay Rent Act. The trial Court also considered the alternate case of the tenant u/s 12[3][b] of the Rent Act, and found on the facts of the case that the tenant had failed to deposit the appropriate amount in court on the date of framing of the issues, and to make regular payments thereafter, and had therefore lost the protection of section 12[3][b] as well. The trial Court therefore passed a decree for eviction against the defendant - tenant.

3. The tenant thereupon preferred an appeal to the lower appellate Court. The lower appellate Court on a re-appreciation of the evidence on record, confirmed all the findings of fact recorded by the trial Court, and found that the tenant was in arrears of rent of more than six months, and that he had failed to meet the demand made by the statutory notice u/s 12[2] of the Act, and was therefore liable to be evicted u/s 12[3][a] of the Act. The lower appellate Court also considered the case, in the alternative, u/s 12[3][b] of the Act and confirmed the findings of the trial Court in this context as well. The lower appellate Court therefore confirmed the decree of eviction passed against the tenant by the trial Court.

4. Hence, the present revision at the instance of the tenant.

5. Before proceeding with the merits of the matter, it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising u/s 29[2] of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Ors. v/s Patel Mohanlal Muljibhai [1998(2) GLH 736] = AIR 1988 SC 3325, while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai v/s Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on

evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

6. I have heard the learned counsel for the petitioner - tenant on his various submissions. However, so far as the factual findings are concerned, I am unable to persuade myself to take a different view in the matter. So far as the application of the provisions of section 12[3][a] are concerned, the matter may perhaps be debatable, which is not the case when the provisions of section 12[3][b] are applied. Once it is found that the tenant has failed to deposit the appropriate amount in court on or before the date of framing of the issues, and to continue to make regular payment in court thereafter, there is no option to the court except to hold that he has lost the protection of section 12[3][b] of the Rent Act. Thus, even if this Court were to proceed on the basis that section 12[3][b] would be applicable, the tenant would nevertheless be required to face a decree of eviction.

7. I therefore see no substance in the present revision and the same is accordingly dismissed. Rule discharged with no orders as to costs. Interim relief stands vacated.

8. At this stage, learned counsel for the petitioner - tenant seeks time to vacate the premises. On the facts and circumstances of the case, the petitioner - tenant is granted time to vacate the premises upto 26th December 2000, subject to the condition that he files the usual undertaking in this court latest by 16th of August 2000. It is clarified that there shall be no extension of time for the purpose of filing the undertaking, and if the same is not filed by due date, the relief against the execution of the decree shall stand vacated ipso facto without any further orders in this regard.

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